Remarks/Arguments:

Claim 16 remains rejected under 35 U.S.C. 112. The Examiner argues that there is no support in the specification for "a computer-readable storage medium containing a set of instructions executable by a processor to control an electronic device" as recited in claim 16.

Applicant previously submitted that support was provided for claim 16 at least by paragraph [0015], which reads, in part, "client 34 also includes a packet manager 70 executing thereon that is operable to perform this determination and to develop the retry strategy therefrom". Packet manager 70 is described at paragraph [0017] as including software objects. Applicant argued that it is well known in the art that the execution of software objects on a device such as client 34 necessarily involves a computer-readable storage medium, such as a memory as shown in FIG. 2 of U.S. Patent No. 5682460 (Hyziak). It further involves a set of instructions contained within the storage medium (Hyziak, col. 3 ll. 41-44) and a processor (Hyziak, FIG. 2).

The Examiner, in response, argues that "it does not matter whether it is well known or not, it must be clearly described in the specification." Applicant respectfully submits that the subject matter defined by claim 16 is in fact clearly described. The first paragraph of 35 U.S.C. 112 reads as follows:

> "The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention."

Further, the Manual of Patent Examining Procedure (MPEP), at section 2163-I and 2163-I-B respectively, reads as follows:

"See *In re Koller*, 613 F.2d 819, 204 USPQ 702 (CCPA 1980) (original claims constitute their own description); accord *In re Gardner*, 475 F.2d 1389, 177 USPQ 396 (CCPA 1973); accord *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976). It is now well accepted that a satisfactory description may be in the claims or any other portion of the originally filed specification."

"While there is no *in haec verba* requirement, newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure."

Applicant notes that claim 16, as originally filed, recited a "computer-readable storage medium containing a set of instructions for an electronic device." In addition, there is no requirement for verbatim support in the specification. Further, a person skilled in the art would clearly appreciate that any implementation of software objects such as packet manager 70 requires the provision of "a computer-readable storage medium containing a set of instructions executable by a processor to control an electronic device." Applicant therefore submits that the subject matter defined by claim 16 is in fact supported by "full, clear, concise, and exact terms as to enable any person skilled in the art ... to make and use the same". Reconsideration of the above rejection is respectfully requested.

Claims 1, 3, 10, 12, 16-22 and 28-32 remain rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2004/0258039 (Stephens), U.S. Patent No. 7260392 (Kitchin) and U.S. Patent No. 7289453 (Riedel). Applicant respectfully disagrees, for the reasons set out below.

As conceded by the Examiner, Stephens does not disclose the feature of "repeating said transmitting step until said transmitting step fails" as recited in Applicant's claim 1. The Examiner argues that this feature is provided instead by Kitchin. Applicant submits that it would not be obvious to apply Kitchin to Stephens, as Stephens, in addition to not satisfying the above claim feature, actually teaches against it.

Stephens discloses two transmit modes, described at paragraphs [0038] and [0039]. The first mode simply involves a data burst being transmitted, to obtain "overall higher data throughput". No mention is made of waiting for acknowledgment signals. The second mode allocates a first portion of a transmit opportunity (TXOP) for a data burst, and a second portion for retries. The second portion, according to Stephens "may allow the system, in some cases, to detect acknowledgements for any sent packets, and then send any necessary retries during this same TXOP".

Clearly, Stephens does not contemplate the "stop and wait" process referred to by the Examiner and described at paragraph [0020] of the specification. Rather, in both modes, Stephens contemplates sending data continuously, without waiting for any acknowledgement. The first mode makes no provision for failed packet transmissions, while in the second mode, a portion of the TXOP is reserved for retries in the event that failures are detected after the data burst is complete. At paragraph [0082], Stephens discloses that in the second mode, the TXOP is divided into first and second portions based on the probability of transmission failure, which depends on channel condition. That is, if channel condition is good, the second portion will be smaller, as less retries are anticipated. Waiting for acknowledgement after every packet would remove

the use of Stephens' second portion of the TXOP, and would not allow Stephens to achieve higher data throughput even with excellent channel conditions.

Applicant therefore submits that it would not be obvious for a person skilled in the art to provide Stephens with the feature of "repeating said transmitting step until said transmitting step fails" as recited in claim 1 since the person skilled in the art would actually be led away from such a feature by Stephens. Thus, no combination of prior art would lead a person skilled in the art to the subject matter of claim 1, and claim 1 is believed to be patentable.

The Examiner argues, in response to the above, that "Applicant's argument that Stephens doesn't mention waiting for acknowledgement is not relevant because the Examiner doesn't rely on Stephens for that limitation but Kitchin."

Applicant respectfully submits that the above statement does not account for the entirety of Applicant's argument. Stephens, as indicated previously by the Examiner, does indeed lack the above-mentioned feature. However, Applicant's argument turns on the fact that Stephens expressly teaches <u>against</u> the incorporation of such a limitation. In other words, Applicant is arguing that regardless of where else the feature of "repeating said transmitting step until said transmitting step fails," may be found in the art – be it Kitchins or elsewhere – a person skilled in the art would never be led to apply that feature to Stephens, because Stephens teaches the skilled person directly away from such a modification.

This is because applying such a feature to Stephens would not cure any shortcoming, as argued by the Examiner, but instead would destroy Stephens' contribution to the art. The Examiner notes in the Advisory Action, "The problem with this kind of delivery of packet is that the source has to wait until for

sometime before it transmits the next packet. However, it guarantees reception of the transmitted packets..." Stephens, as argued above, looks to address precisely that problem in order to make the "best possible use of each channel access" (Stephens, para. [0001]). Stephens does this by transmitting data in bursts without waiting, and thus teaches directly against applying the "stop and wait" mode of operation.

Claims 10 and 16 contain similar limitations, and are believed to be patentable for the reasons discussed above. Claims 3 and 17-22 depend on claim 1, while claims 12 and 28-32 depend on claim 10. Applicant therefore respectfully traverses this rejection in light of the arguments presented in connection with claim 1.

Claims 2, 11, 23 and 33 are rejected under 35 U.S.C. 103(a) in view of Stephens, Kitchin, Riedel and U.S. Patent 6912387 (Haas). Claims 2 and 23 depend on claim 1, while claims 11 and 33 depend on claim 10. Applicant therefore respectfully traverses this rejection in light of the arguments presented in connection with claim 1.

Claims 4-9, 13-15 and 27 are rejected under 35 U.S.C. 103(a) in view of Stephens, Kitchin, Riedel and U.S. Publication No. 2004/0151136 (Gage). Claims 4-9 and 27 depend on claim 1, while claims 13-15 depend on claim 10. Applicant therefore respectfully traverses this rejection in light of the arguments presented in connection with claim 1.

Claims 24-26 and 34-36 are rejected under 35 U.S.C. 103(a) in view of Stephens, Kitchin, Riedel and U.S. Patent No. 5682460 (Hyziak). Claims 24-26 depend on claim 1, while claims 34-36 depend on claim 10. Applicant therefore respectfully

traverses this rejection in light of the arguments presented in connection with claim 1.

Claims 37 and 38 are rejected under 35 U.S.C. 103(a) in view of Stephens, Kitchin, Riedel, Hyziak and U.S. Patent No. 6771594 (Upadrasta). Claims 37 and 38 depend on claim 10. Applicant therefore respectfully traverses this rejection in light of the arguments presented in connection with claim 1.

CONCLUSIONS

Applicant believes that this application is now in condition for allowance. To the extent that any issues remain to be resolved, however, applicant requests that the Examiner contact the undersigned to resolve these issues.

The Commissioner is also authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-3750.

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Respectfully submitted,

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